

To: Our Clients and Friends

February 14, 2012

Court Issues Order Affecting the Sale of Gift Cards in New Jersey

New Jersey Retail Merchants Association v. Sidamon-Eristoff, et al.

In 2010, New Jersey amended its unclaimed property statute to allow for the escheat of the remaining balance of gift cards after two years of inactivity. The amended statute also required gift card issuers to retroactively escheat all funds from inactive gift cards sold within the last five years, to collect the name, address, and/or zip code of gift card purchasers, and, if the purchaser's address was not known, to deem the issuing store's address as the purchaser's address. In response, several retail groups filed a lawsuit challenging the constitutionality of the amended statute and seeking an injunction to prevent enforcement of the statute.

A recent Third Circuit opinion partially enjoined enforcement of the new law, holding that the amended statute could not be applied retroactively with respect to cards usable solely for goods/services and, if the purchaser's address is not known, the store's address cannot be used in cases where the gift card issuer's state of domicile does not escheat unused card funds. The Court denied the injunction as to the remainder of the statute, permitting the escheat of the gift card balance after two years of inactivity and requiring the collection of the name, address and/or zip code of the purchaser. A copy of the opinion may be found at:
<http://www.ca3.uscourts.gov/opinarch/104551p.pdf>.

Broad Implications

Prior to the amendment, gift cards redeemable for goods/services were not subject to escheat in New Jersey. The amendment will affect retailers' data collection practices by requiring the collection and storage of gift card purchasers' name, address, and/or zip code. In addition, with respect to any cards as to which a New Jersey zip code (or address) has been collected, any balance remaining on a gift card must be escheated to the State of New Jersey after two years of inactivity.

Next Steps for Issuers of Gift Cards in New Jersey

It is unclear whether any of the parties will file an appeal of this order, or whether the case will ultimately reach the U.S. Supreme Court. The New Jersey Treasury has indicated it does not intend to immediately enforce the amended statute, and it will issue further guidance in the near future. In the meantime, issuers of gift cards need to consider how to implement the collection and retention of the purchaser's name, address, and/or zip code for both in-store and online gift card sales to New Jersey residents.

Contact Information

If you have any questions or would like additional information on this topic, please do not hesitate to contact Judith Rinearson at (212) 541-1135 or judith.rinearson@bryancave.com, or Margo Hirsch Strahlberg at (312) 602-5094 or mhstrahlberg@bryancave.com. You can also contact any member of our [Retail Group](#) to discuss further.